

AMENDED IN SENATE JULY 23, 1998  
AMENDED IN SENATE JULY 14, 1998  
AMENDED IN ASSEMBLY APRIL 30, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2687**

**Introduced by Assembly Member Gallegos**

February 23, 1998

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An act to add Sections ~~2220.3, 4008.6,~~ *4008.6* and 4322.5 to the Business and Professions Code, relating to healing arts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2687, as amended, Gallegos. Healing arts.

Existing law authorizes the ~~Division of Medical Quality~~ *California State Board of Pharmacy* to take action against all persons guilty of violating the ~~Medical Practice Act~~. The ~~California State Board of Pharmacy~~ is similarly empowered ~~with respect to a violation of the Pharmacy Law~~.

This bill would authorize local health officers to take action against unlicensed ~~physicians and surgeons and~~ pharmacists, that may include facility closure, as specified.

Existing law specifies certain penalties for a violation of the Pharmacy Law, as specified.

This bill would provide for a felony penalty when a person who is not a pharmacist offers for sale without a prescription a controlled substance or a dangerous drug or device, as

defined. In creating a new crime, the bill would impose a state-mandated local program.

The bill would appropriate an unspecified sum from the General Fund to local agencies for funding local investigative and enforcement activities authorized by the bill.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 2220.3 is added to the Business~~  
2     ~~and Professions Code, to read:~~

3     ~~2220.3. (a) The Legislature hereby finds and declares~~  
4     ~~that the unlicensed practice of medicine poses a~~  
5     ~~significant threat to the public health, safety, and welfare~~  
6     ~~of all residence of the state. In recent years, the public has~~  
7     ~~become increasingly exposed to a proliferation of persons~~  
8     ~~who hold themselves out to the public as certified~~  
9     ~~practitioners of medicine. These persons engage in a~~  
10    ~~number of illegal and dangerous acts, including, but not~~  
11    ~~limited to, the diagnosis and treatment of disease as well~~  
12    ~~as the sale and distribution of controlled substances and~~  
13    ~~dangerous drugs and devices.~~

14    ~~The Legislature further finds and declares that the~~  
15    ~~resources of state agencies charged with the regulation of~~  
16    ~~the practice of medicine and the enforcement of this~~  
17    ~~chapter are inadequate to control this burgeoning~~  
18    ~~problem and that, therefore, the occasional enlistment of~~  
19    ~~local health officers in regulatory and enforcement~~  
20    ~~functions normally reserved to the state is appropriate~~  
21    ~~and necessary in order to protect the health, safety, and~~  
22    ~~welfare of all persons of the state.~~

23    ~~Notwithstanding the foregoing, nothing contained in~~  
24    ~~this section shall be construed as limiting or supplanting~~  
25    ~~the authority of the state agencies charged with the~~  
26    ~~regulation of the practice of medicine and the~~  
27    ~~enforcement of this chapter.~~

1 ~~(b) Whenever a local health officer determines that~~  
2 ~~there exists in his or her jurisdiction any person who is~~  
3 ~~engaging in the practice of medicine without a license in~~  
4 ~~violation of this chapter, the local health officer may take~~  
5 ~~action against that person. That action shall include, but~~  
6 ~~not be limited to:~~

7 ~~(1) Receiving and investigating complaints from the~~  
8 ~~public, from other licensees, or from health care facilities~~  
9 ~~that a person is engaging in the unlicensed practice of~~  
10 ~~medicine.~~

11 ~~(2) Upon confirming that a person is engaging in the~~  
12 ~~unlicensed practice of medicine, ordering the closure of~~  
13 ~~the medical clinic or facility, if any, operated by the~~  
14 ~~person. Where the operation of that clinic or facility poses~~  
15 ~~an immediate threat to the public health, welfare, or~~  
16 ~~safety, the clinic or facility may be closed immediately~~  
17 ~~while the hearing described in subdivision (c) is pending.~~  
18 ~~Immediate danger to the public health, welfare, or safety~~  
19 ~~includes, but is not limited to, evidence that the person~~  
20 ~~is diagnosing or otherwise treating illness or disease, or~~  
21 ~~evidence that the person is providing, selling, or~~  
22 ~~distributing dangerous drugs or devices or controlled~~  
23 ~~substances.~~

24 ~~(c) Any person engaging in the unlicensed practice of~~  
25 ~~medicine whose clinic or facility is closed as a result of~~  
26 ~~local health officer action pursuant to subdivision (b)~~  
27 ~~shall be entitled to a hearing to show cause why the~~  
28 ~~closure was unwarranted. A written request for a hearing~~  
29 ~~shall be submitted by the person to the local health officer~~  
30 ~~within 15 calendar days of closure. A failure to request a~~  
31 ~~hearing within 15 calendar days of closure shall be~~  
32 ~~deemed a waiver of the right to a hearing. When~~  
33 ~~circumstances warrant, the hearing officer may order a~~  
34 ~~hearing at any reasonable time within this 15-day period~~  
35 ~~to expedite the hearing process. The hearing shall be held~~  
36 ~~within 15 calendar days of the receipt of a request for a~~  
37 ~~hearing. Upon written request of the person, the hearing~~  
38 ~~officer may postpone any hearing date, if circumstances~~  
39 ~~warrant the postponement.~~

~~1 The hearing officer shall issue a written notice of  
2 decision to the person within five working days following  
3 the hearing. In the event the hearing officer determines  
4 that the closure was warranted, the notice shall specify  
5 the acts of omissions with which the person is charged,  
6 and shall state that the clinic or facility shall remain closed  
7 permanently. Evidence that the person engaged in the  
8 unlicensed practice of medicine shall be prima facie  
9 evidence that permanent closure is warranted. Any clinic  
10 or facility still operating shall close immediately upon  
11 receipt of the written decision authorizing that closure.~~

~~12 SEC. 2.~~

~~13 SECTION 1.~~ Section 4008.6 is added to the Business  
14 and Professions Code, to read:

~~15 4008.6. (a) The Legislature hereby finds and declares  
16 that the unlicensed practice of pharmacy poses a  
17 significant threat to the public health, safety, and welfare  
18 of all residence of the state. In recent years, the public has  
19 become increasingly exposed to a proliferation of persons  
20 who hold themselves out to the public as licensed  
21 pharmacists. These persons engage in a number of illegal  
22 and dangerous acts, including, but not limited to, the  
23 distribution of controlled substances and dangerous drugs  
24 and devices.~~

~~25 The Legislature further finds and declares that the  
26 resources of state agencies charged with the regulation of  
27 the practice of pharmacy and the enforcement of this  
28 chapter are inadequate to control this burgeoning  
29 problem and that, therefore, the occasional enlistment of  
30 local health officers in regulatory and enforcement  
31 functions normally reserved to the state is appropriate  
32 and necessary in order to protect the health, safety, and  
33 welfare of all persons of this state.~~

~~34 Notwithstanding the foregoing, nothing contained in  
35 this section shall be construed as limiting or supplanting  
36 the authority of the state agencies charged with the  
37 regulation of the practice of pharmacy and the  
38 enforcement of this chapter.~~

~~39 (b) Whenever a local health officer determines that  
40 there exists in his or her jurisdiction any person who is~~

engaging in the practice of pharmacy without a license in violation of this chapter, the local health officer may take action against that person. That action shall include, but not be limited to:

(1) Receiving and investigating complaints from the public, from other licensees, or from health care facilities that a person is engaging in the unlicensed practice of pharmacy.

(2) Upon confirming that a person is engaging in the unlicensed practice of pharmacy, ordering the closure of the facility, if any, operated by the person. Where the operation of that facility poses an immediate threat to the public health, welfare, or safety, the facility may be closed immediately while the hearing described in subdivision (c) is pending. Immediate danger to the public health, welfare, or safety includes, but is not limited to, evidence that the person is providing, selling, or distributing dangerous drugs or devices or controlled substances.

(c) Any person engaging in the unlicensed practice of pharmacy whose facility is closed as a result of local health officer action pursuant to subdivision (b) shall be entitled to a hearing to show cause why the closure was unwarranted. A written request for a hearing shall be submitted by the person to the local health officer within 15 calendar days of closure. A failure to request a hearing within 15 calendar days of closure shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the hearing process. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the person, the hearing officer may postpone any hearing date, if circumstances warrant the postponement.

The hearing officer shall issue a written notice of decision to the person within five working days following the hearing. In the event the hearing officer determines that the closure was warranted, the notice shall specify the acts or omissions with which the person is charged, and shall state that the facility shall remain closed

1 permanently. Evidence that the person engaged in the  
2 unlicensed practice of pharmacy shall be prima facie  
3 evidence that permanent closure is warranted. Any  
4 facility still operating shall close immediately upon  
5 receipt of the written decision authorizing that closure.

6 ~~SEC. 3.~~

7 SEC. 2. Section 4322.5 is added to the Business and  
8 Professions Code, to read:

9 4322.5. Notwithstanding Section 4321, any person  
10 who is not a pharmacist as defined in Section 4036 who  
11 knowingly owns, manages, or conducts a retail business  
12 that offers for sale without prescription a controlled  
13 substance as defined in Section 4021 or a dangerous drug  
14 or a dangerous device as defined in Section 4022 shall be  
15 guilty of a felony, punishable by a fine of not less than ten  
16 thousand dollars (\$10,000) nor more than one hundred  
17 thousand dollars (\$100,000), or by imprisonment in the  
18 state prison, or by both that fine and imprisonment.

19 ~~SEC. 4.~~

20 SEC. 3. The sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) is  
21 hereby appropriated from the General Fund to the  
22 Controller for allocation to local agencies for purposes of  
23 funding local investigative and enforcement activities  
24 pursuant to this act.

25 ~~SEC. 5.~~

26 SEC. 4. This act is an urgency statute necessary for the  
27 immediate preservation of the public peace, health, or  
28 safety within the meaning of Article IV of the  
29 Constitution and shall go into immediate effect. The facts  
30 constituting the necessity are:

31 In order to safeguard the health and welfare of the  
32 people of this state by providing for increased regulatory  
33 and enforcement activities relating to the unauthorized  
34 practice of ~~medicine~~ or pharmacy at the earliest possible  
35 time, it is necessary that this act take effect immediately.